

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Bassett Unified School District)	File No. SLD-167641
La Puente, California)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: February 25, 2002

Released: February 26, 2002

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed on behalf of Bassett Unified School District (Bassett), La Puente, California, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Bassett seeks review of SLD's denial of its Funding Year 3 request for discounted internal connections under the schools and libraries universal service mechanism.² For the reasons discussed below, we grant the Request for Review and remand for further review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470,⁴ which is posted to the Administrator's website for all

¹ Letter from James N. Horwood, Scott H. Strauss and David B. Lieb, Spiegel and McDiarmid, to Federal Communications Commission, filed May 30, 2001 (Request for Review).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

potential competing service providers to review.⁵ After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.⁶ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. Applicants may only seek support for eligible services.⁷ The instructions for the FCC Form 471 clearly state: "You may not seek support for ineligible services, entities, and uses."⁸ The instructions further clarify that "[w]hile you may contract with the same service provider for both eligible and ineligible services, your contract or purchase agreement must clearly break out costs for eligible services from those for ineligible services."⁹ Although SLD reduces a funding request to exclude the cost of ineligible services in circumstances where the ineligible services represent less than 30 percent of the total funding request, SLD will deny a funding request in its entirety if ineligible services constitute 30 percent or more of the total.¹⁰

⁵ 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

⁶ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

⁷ 47 C.F.R. § 54.504 *et seq.*

⁸ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (September 1999), at 18 (Form 471 Instructions).

⁹ Form 471 Instructions, at 23.

¹⁰ See *Request for Review of the Decision of the Universal Service Administrative Company by Ubyly Community Schools*, *Federal-State Joint Board on Universal Service*, *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, DA 00-1517 (Com. Car. Bur. rel. July 10, 2000); *Request for Review of the Decision of the Universal Service Administrator by Anderson School*, *Federal-State Joint Board on Universal Service*, *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, DA 00-2630, para. 8 (Com. Car. Bur. rel. November 24, 2000). The "30-percent policy" is not a Commission rule, but rather is an SLD operating procedure established pursuant to FCC policy. See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, *Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998). This operating procedure, used during SLD's application review process, enables SLD to efficiently process requests for funding for services that are eligible for discounts but that also include some ineligible components. If less than 30 percent of the request is for funding of ineligible services, SLD normally will issue a funding commitment for the eligible services. If 30 percent or more of the request is for funding of ineligible services, SLD will deny the application in its entirety. The 30 percent policy allows SLD to efficiently process requests for funding that contain only a small amount of ineligible services without expending significant fund resources working with applicants that, for the most part, are requesting funding of ineligible services.

4. SLD denied Bassett's Funding Request Number (FRN) 356779, which sought the purchase and maintenance of discounted internal connections for the individual schools in the district and the District Office, for a total pre-discount amount of \$179,664.84.¹¹ SLD stated that "30% or more of this FRN includes a request for [Switch Monitoring] (SMON) licenses which is an ineligible product and maintenance on phones & modems which are an ineligible service based on program rules."¹² Bassett appealed to SLD, asserting that the amount of the services found by SLD to be eligible was \$134,210.40, or 75% of the request.¹³ Thus, Bassett asserted that, even accepting SLD's eligibility determinations, less than 30% of the request was ineligible.¹⁴

5. SLD denied the appeal.¹⁵ Without specifying whether it agreed or disagreed with Bassett's assessment of the dollar amount of the services initially found ineligible, SLD again found that 30% or more of the request was ineligible based on a modified list of ineligible services: "SMON licenses, telephone equipment maintenance (modems are now considered to be eligible . . .) and the services requested for the ineligible entity (District Office)"¹⁶ Bassett then filed the pending Request for Review.

6. In its Request for Review, Bassett argues primarily that the District Office, although not a school or library, was eligible for internal connections discounts.¹⁷ In the *Fourth Order on Reconsideration*, the Commission held that "discounts are not available for internal connections in non-instructional buildings of a school district or administrative buildings of a library unless those internal connections are essential for the effective transport of information to an instructional building or library."¹⁸ As an example, the Commission stated that "discounts would be available for routers and hubs in a school district office if individual schools in the school district were connected to the Internet through the district office."¹⁹

¹¹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Siran Grigorian, Bassett Unified School District, dated June 23, 2000, at 5.

¹² *Id.*

¹³ Letter from Siran Grigorian, Bassett Unified School District, to Schools and Libraries Division, Universal Service Administrative Company, dated July 12, 2000, at 1.

¹⁴ *Id.*

¹⁵ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Robert F. Nero, Bassett Unified School District, dated May 1, 2001 (Administrator's Decision on Appeal).

¹⁶ *Id.* at 1-2.

¹⁷ Request for Review, at 5-8.

¹⁸ *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, para. 209 (1997) (*Fourth Order on Reconsideration*).

¹⁹ *Id.*

7. Bassett asserts that the internal connections are provided to the District Office primarily as a central connection to the Internet for the various member schools, the situation specified by the Commission.²⁰ Bassett provides various documents and an affidavit from Siran Gregorian, its Network Operations Administrator, in support of its assertion.²¹ After reviewing this evidence, we find that the internal connections at the district office for which Bassett seeks support in FRN 356779 are being used primarily to connect individual schools in the school district to the Internet, and are thus eligible under the *Fourth Order on Reconsideration*.²² We therefore vacate SLD's denial of FRN 356779 and remand for a new determination, consistent with this opinion, of the percentage of FRN 356779 that is ineligible for funding.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Bassett Unified School District, La Puente, California, on May 30, 2001, IS GRANTED, and the application IS REMANDED to SLD for further review consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau

²⁰ Request for Review, at 6.

²¹ Request for Review, attachment 1.

²² Because SLD did not assert the ineligibility of the internal connections located at the District Office until the Administrator's Decision on Appeal, the instant Request for Review is Bassett's first opportunity to address the claim. We therefore accept its new evidence on this issue.